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9 *Lead Counsel for Indirect*
10 *Purchaser Class*

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 IN RE OPTICAL DISK DRIVE PRODUCTS
15 ANTITRUST LITIGATION

No. 3:10-md-2143 RS (JCS)

16 INDIRECT PURCHASER PLAINTIFFS'
17 CONDITIONAL NON-OPPOSITION TO
ERWIN'S MOTION FOR
ATTORNEYS' FEES AND INCENTIVE
AWARD

18 DATE ACTION FILED: Oct. 27, 2009

19 This Document Relates to:

20 ALL INDIRECT PURCHASER ACTIONS
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1 To achieve finality in this lengthy litigation, Indirect Purchaser Plaintiffs and objector Conner
 2 Erwin have agreed on proposed terms for resolution of his Motion for Attorneys' Fees and Incentive
 3 Award. ECF No. 3101. By this Conditional Non-Opposition, IPPs in coordination with Mr. Erwin
 4 jointly request that his motion be granted on specific terms proposed below.¹

5 The parties believe, for the purpose of reaching a final resolution of disputed issues, that the
 6 following terms are fair, adequate, and reasonable and otherwise satisfy the requirements of Fed. R.
 7 Civ. P. 23:

- 8 1. Mr. Erwin's counsel shall be paid an attorneys' fee of \$625,000 (14.27% of the \$4.38
 9 million difference being returned to the settlement fund).
- 10 2. For the reasons stated in the motion, Mr. Erwin shall receive an incentive award of
 11 \$5,500.
- 12 3. The attorneys' fee and the incentive award shall be paid from the difference returned, on
 13 the common fund rationale referenced in the Ninth Circuit's memorandum disposition.²
- 14 4. With the intent to conclude this litigation, the parties will not appeal or otherwise
 15 challenge the Order.

16 The parties' agreement is conditioned on the Court's granting of Mr. Erwin's motion on these
 17 terms. If the Court denies the motion on the terms proposed, the parties agree to return to a litigation
 18 posture. Class Counsel accordingly request, with Mr. Erwin's assent, that the due date for their
 19 Response to his fee motion be vacated pending a ruling.

20 The terms do not reflect what either side would necessarily accept if the matter is further
 21 litigated, but "the very essence of a settlement is compromise, 'a yielding of absolutes and an
 22 abandoning of highest hopes.'"³ In further litigation, depending on the Court's ruling, Mr. Erwin
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25 ¹ Counsel for Mr. Erwin, Robert W. Clore, has reviewed this Conditional Non-Opposition and
 authorized Class Counsel to state his agreement with the terms and conditions described.

26 ² *In re Optical Disk Drive Prods, Antitrust Litig.*, --- F.4th ---, 2022 WL 1955672, at *4 n.5 (9th
 27 Cir. June 6, 2022) (citing *Rodriguez v. Disner*, 688 F.3d 645, 658 (9th Cir. 2012)).

28 ³ *Officers for J. v. Civ. Serv. Commn. of City and Cnty. of San Francisco*, 688 F.2d 615, 624 (9th
 Cir. 1982).

1 might be inclined to appeal, among other things, an award as too low, and Class Counsel might be
2 inclined to appeal either the amount or any fee shifting.

3 The parties are mindful that additional litigation on attorney fees, especially in a case more
4 than ten years old, draws on judicial resources the Court could devote to other cases. The proposed
5 terms, without foregoing appellate rights should they be rejected, ensure finality to this already
6 extensive litigation.⁴

7 DATED: August 15, 2022

HAGENS BERMAN SOBOL SHAPIRO LLP

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27 ⁴ See *Ching v. Siemens Indus., Inc.*, 2014 U.S. Dist. LEXIS 89002, 2014 WL 2926210, at *4
28 (N.D. Cal. June 27, 2014) (“Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results”).